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AUTHORSHIP AND LIBERTY

[The following extended extract from the oral argument of Joseph S. Auerbach before the Appellate Division of the Supreme Court (First Department), in the suppression of *The "Genius"* by Theodore Dreiser, is printed in the REVIEW as a timely and forceful contribution to freedom of thought and expression.—THE EDITOR.]

May it please the Court:

AT the instance of the Society for the Suppression of Vice, through threat of arrest of the publishers, *The "Genius,"* by Theodore Dreiser, has been suppressed as an obscene book; and you are asked in this agreed case to determine whether such unwarranted action shall be judicially upheld.

In the controversy are involved questions of more importance than are usually submitted to a court of justice. For if the circulation of a book of its achievement can be forbidden, this officious and grotesque Society will have been given a roving commission for further mischief, and freedom of thought and expression dealt a staggering blow from which it will not soon recover. If, on the other hand, your decision be as we think it should be, it will undo a great injustice not only to a distinguished author and to the community at large, but will be a kind of charter right for author and publisher and even the participant in public debate.

In order to accomplish this you need not be opposed to some agency for the suppression of vice manifesting itself by way of lewdness in the printed word or picture, though in my opinion such duty should devolve upon the legally constituted public authorities charged with the prosecution of crimes. If we are to have another agency, surely there must be such a judicial determination as to its legitimate province, that it will not be invited to run amuck at reputations and property rights, and by threat of arrest do that which is equivalent to issuing execution in advance of judgment.

Let me say also that you are not called upon to endorse all the scenes or episodes of the book, standing alone or even in their context; for Mr. Dreiser is not asking of the Court commendation of his literary excellence, but a judgment restoring to him the property rights of which he has unjustly been deprived. On the contrary, it may well be that you will dissent from the propriety and necessity for some of them, and would not care to be sponsor for all the book contains on some pages by way of heightened color; you may have little or no liking for its principal character or for any of its characters, or admire its style or subject-matter, or be willing to subscribe to all of the author's philosophy of life. In more than one of these particulars I should be in accord with you. We may say the same of many books which have made literary epochs, and even of those which have had to do with the advancement of civilization in the world.

So long ago as the middle of the last century, when freedom of thought and expression was far from being what it is to-day, the *Madame Bovary* of Flaubert, a classic now, was not condemned nor its author or publisher punished, though the work was by no means in all respects approved by the French Court.

Yet the inquisitorial censor who by prying into *The "Genius"* can find the objectionable view as to morality and decency, must certainly have his sensibilities rudely shocked if he turn to some of the pages of *Madame Bovary*. The judges said this by way of conclusion:

But whereas the work of which Flaubert is the author is a work which appears to have been the result of long and serious labors from a literary point of view and from that of a study of characters; that the passages indicated by the order of reference, however reprehensible they may be, are few in number if they are compared with the whole extent of the work; that these passages, whether it be in the ideas which they expose, whether it be in the situations which they represent, all contribute to the unity of the characters which the author has wished to present, even in exaggerating them and in infusing into them a realism vulgar and often shocking:

Whereas, Gustave Flaubert protests his respect for good manners and for all that relates to religious morality; that it does not appear that his book has been, like certain other works, written with the sole aim of giving satisfaction to the sensual passions, to the spirit of license and of debauch, or of ridiculing those things which should be surrounded by the respect of all:

That he has committed the error only of losing sometimes sight of the rules which every writer who respects literature like art, in order

to accomplish the good which it is called upon to produce, should be not only chaste and pure in its form but in its expression:

Under these circumstances, as it is not sufficiently established that Pichat, Gustave Flaubert and Pillet have rendered themselves culpable of the offences which have been imputed to them;

The tribunal acquits them of the accusation brought against them and discharges them without costs.

Nor is it your function any more than it was that of the French judges to be critics of social offences not the subject of judicial review. As the Court in a case I shall refer to later has said: "It is no part of the duty of courts to exercise a censorship over literary productions."

Before giving a summary of *The "Genius,"* let me ask you also to keep in mind what is so well stated in *People v. Muller*, 96 N. Y., particularly at page 411.

The test of an obscene book was stated in *Regina v. Hicklin* (L. R. 3 Q. B. 369) to be, whether the tendency of the matter charged as obscenity is to deprave or corrupt those whose minds are open to such immoral influences and who might come into contact with it. We think it would also be a proper test of obscenity in a painting or statue, whether the motive of the painting or statue, so to speak, as indicated by it, is pure or impure, whether it is naturally calculated to excite in a spectator impure imaginations, and whether the other incidents and qualities, however attractive, were merely accessory to this as the primary or main purposes of the representation.

Accepting this rule as correct, let us see how *The "Genius"* stands its test.

It is a book of nearly seven hundred and fifty closely printed pages. It is a study of men and things, intense, sombre and often gruesome—persisted in at times to the point of tediousness—and neither the principal character, Witla, nor any of its characters attracts the reader. That anyone would turn to this book to gloat over its licentiousness is unthinkable, for it compels attention and interest by reason of its almost epic breadth of view as to some phases of life, to which we may not wisely shut our eyes.

Witla, the "Genius," is born in a town called Alexandria, in Illinois, somewhere toward the close of the last century, and reared in a home not so ordered as to give a right direction to the thoughts or aims of youth. The boy is weak and anæmic, and along with the artistic taste which he longs to develop, he has dreams of great fame. But at the outset we see in him the early manifestations of unbridled amorous

desires destined to drag him down as he seeks to rise; and one of the early episodes of the book is with a young girl, ending, however, only in a kind of cheap love-making.

Moody and odd, slothful in study, he is moved often by a conception of life which is crude, if not corrupting. He begins his career on the town newspaper and later starts for Chicago to try his fortunes there, with a few dollars in his pocket. This is as Chicago appears to him:

At page 36 we read:

The city of Chicago—who shall portray it! This vast ruck of life that had sprung suddenly into existence upon the dank marshes of a lake shore. Miles and miles of dreary little houses; miles and miles of wooden block-paved streets, with gas lamps placed and water mains laid, and empty wooden walks set for pedestrians; the beat of a hundred thousand hammers; the ring of a hundred thousand trowels. Long converging lines of telegraph poles; thousands upon thousands of sentinel cottages, factory plants, towering smoke stacks, and here and there a lone, shabby church steeple, sitting out pathetically upon vacant land. The raw prairie stretch was covered with yellow grass; the great broad highways of the tracks of railroads, ten, fifteen, twenty, thirty, laid side by side and strung with thousands upon thousands of shabby cars, like beads upon a string. Engines clanging, trains moving, people waiting at street crossings—pedestrians, wagon drivers, street car drivers, drays of beer, trucks of coal, brick, stone, sand—a spectacle of new, raw, necessary life!

Again at page 39 we read:

It' was a city that put vitality into almost every wavering heart; it made the beginner dream dreams; the aged to feel that misfortune was never so grim that it might not change.

Underneath, of course, was struggle. Youth and hope and energy were setting a terrific pace. You had to work here, to move, to step lively. You had to have ideas. This city demanded of you your very best, or it would have little to do with you. Youth in its search for something—and age—were quickly to feel this. It was no fool's paradise.

Such vivid description characterizes the author's art so that it may fairly be said to be the rule and not the exception.

He gets a job at storing stoves, but his pay is but a few dollars a week; and finally after having been brutally threatened by one of the workmen he leaves the place and secures a position with a real estate concern at eight dollars a week, only to be thrown out of employment when the enterprise fails. He buys a suit of clothes on the instalment

plan; hires himself out as a driver for a laundry at a slight increase in wages, begins making sketches and meets a laundry-worker who becomes his mistress. He then obtains a position as collector for a furniture company, at an increase sufficient to enable him to enter upon the study of art. Allowing himself five dollars a week for living expenses, he spends the remainder for necessities of life and for amusement. He is fortified in his views of what he thinks is the justifiable freedom of the studio by his experience in art study and by an affair with one of the models. These are his thoughts of the artistic life (at page 50):

There was what might have been termed a wild desire in the breast of many an untutored boy and girl to get out of the ranks of the commonplace; to assume the character and the habiliments of the artistic temperament as they were then supposed to be; to have a refined, semi-languorous, semi-indifferent manner; to live in a studio, to have a certain freedom in morals and temperament not accorded to the ordinary person—these were the great things to do and be.

On returning from a visit to his home he meets Angela Blue, who is later to become his wife. He gets a position on a Chicago newspaper, is engaged to be married, and comes to New York City, where his art struggles are described with much detail. He paints street scenes with some success, and several are accepted as covers for magazines.

Beginning with his life in Chicago, his relations with two women are given some importance and their injurious effect upon his purpose in life begins to manifest itself to the reader, though perhaps not to Witla.

At page 117 he is visiting at the home of the girl to whom he is engaged, and the morality of the girl's mother, Mrs. Blue, is contrasted with his own.

He could feel in her what he felt in his own mother—in every good mother—love of order and peace, love of the well being of her children, love of public respect and private honor and morality. All these things Eugene heartily respected in others. He was glad to see them, believed they had a place in society, but was uncertain whether they bore any fixed or important relationship to him. He was always thinking in his private conscience that life was somehow bigger and subtler and darker than any given theory or order of living. It might well be worth while for a man or woman to be honest and moral within a given condition or quality of society, but it did not matter at all in the ultimate substance and composition of the universe. Any form or order of society which hoped to endure must have individuals like Mrs. Blue, who would conform to the highest standards and theories of

that society, and when found they were admirable, but they meant nothing in the shifting subtle forces of nature. They were just accidental harmonies blossoming out of something which meant everything here to this order, nothing to the universe at large. At twenty-two years of age he was thinking these things, wondering whether it would be possible ever to express them; wondering what people would think of him if they actually knew what he did think; wondering if there was anything, anything, which was really stable—a rock to cling to—and not mere shifting shadow and unreality.

He attains recognition as an artist; sells some pictures; marries Angela Blue from a sense of obligation, and goes to Paris, where he might legitimately expect great success. But his Paris pictures show a falling off in ability. He further deteriorates; and during what should have been the maturity of his powers, he can paint no pictures. The reason is not left to conjecture, for at page 246 we read:

It was his hope that he could interest America in these things—that his next exhibition would not only illustrate his versatility and persistence of talent, but show an improvement in his art, a surer sense of color values, a greater analytical power in the matter of character, a surer selective taste in the matter of composition and arrangement. He did not realize that all this might be useless—that he was, aside from his art, living a life which might rob talent of its finest flavor, discolor the aspect of the world for himself, take scope from imagination and hamper effort with nervous irritation, and make accomplishment impossible. He had no knowledge of the effect of one's sexual life upon one's work, nor what such a life when badly arranged can do to a perfect art—how it can distort the sense of color, weaken that balanced judgment of character which is so essential to a normal interpretation of life, make all striving hopeless, take from art its most joyous conception, make life itself seem unimportant and death a relief.

Not only is his course not defended, but on the contrary the author holds him up to the reader as “the coward, the blackguard, the moral thief that he knew himself to be” (page 263).

The weakness of Eugene was that he was prone in each of these new conquests to see for the time being the sum and substance of bliss, to rise rapidly in the scale of uncontrollable, exaggerated affection, until he felt that here and nowhere else, now and in this particular form, was ideal happiness (p. 285).

He gives up all attempt at art. His health fails; his money is gone; he obtains work as a day laborer, and his wife

goes back to her home so as to be able to exist. He recognizes the cause of the punishment visited upon him.

To tell the truth, great physical discomfort recently had painted his romantic tendencies in a very sorry light for him. He thought he saw in a way where they were leading him. That there was no money in them was obvious. That the affairs of the world were put in the hands of those who were content to get their life's happiness out of their management seemed quite plain. Idlers had nothing as a rule, not even the respect of their fellow men. The licentious were worn threadbare and disgraced by their ridiculous and psychologically diseased propensities. Women and men who indulged in these unbridled relations were sickly sentimentalists, as a rule, and were thrown out or ignored by all forceful society (pp.393-4).

Now a married woman becomes his mistress.

After a time he obtains a position in the advertisement department of a newspaper, and subsequently becomes advertising manager of a concern with a large salary.

Then he meets the eighteen-year-old Suzanne, and is deluded into the belief that nothing else counts but another contemptible amorous affair, for which he is prepared to sacrifice his wife and his position. His sayings invested in a real estate scheme are swept away; his wife dies giving birth to a daughter; and Suzanne, after removal from his influence, quickly forgets him; he turns unavailingly for consolation to philosophy, to religion and to Christian Science.

Toward the end of the book he again takes up painting, with some of his old ability restored to him. The final effect of his experience on his character is given at page 733:

Under the heel of his intellectuality was the face, the beauty, that he adored. He despised and yet loved it. Life had played him a vile trick—love—thus to frenzy his reason and then to turn him out as mad. Now, never again should love affect him, and yet the beauty of woman was still his great lure—only he was the master.

Such in briefest outline only is the scheme of this book. Why Mr. Dreiser may have written it is not the subject of inquiry here, but only whether he is entitled to say what he has said. Yet from the point of view of the man of letters there are as many reasons why he should have written *The "Genius"* as that Rolland should have told in *Jean Christophe* the long story of the hero's adulterous intrigue with the wife of a friend who had welcomed him to the shelter of a

home, or that Galsworthy was willing to be responsible for *The Dark Flower*, and more than one other like book.

Leading men of letters of England and from the Authors' League of this country have raised their voice in condemnation of its suppression. And we have collected in the brief a few of the views of distinguished critics as to the book, though we do not give these quotations because it is necessary for you to assent to them in order to decide this case in favor of Mr. Dreiser. For whether you are in sympathy with the favorable comment of such distinguished critics as Mr. Gilman or Mr. Huneker or Mr. Mencken or prefer to accept the rhetorical arraignment of Mr. Stuart P. Sherman or the supercilious silence of some other college professors concerning Mr. Dreiser—as they labor to present their superior academic views concerning the province of fiction—is of little or no importance in this controversy.

The whole preposterous campaign that has been carried on against such books as *The "Genius"* finds its excuse in the shallow notion that the adult must be fed on the same kind of mental food as the child. Inasmuch as indolent parents betray a trust towards their children by not standing sentinel over their course of reading and intellectual and moral training until they reach mature age, a book intended for thoughtful persons must be suppressed by some Vice Society, lest the susceptible young be contaminated by contact with it! In disregard of the accepted rule of law and common sense, the application of a general principle is to be measured by and subordinated to the possibility of an individual hardship!

In the present case there is a claim urged which goes beyond even this absurdity. For in the defendant's brief this reason (italicized as in the quotation) is given as substantially the sole justification of the action of the Society:

In these pages are included accounts of what the Society claims to be indecent conduct in art studios, and the seduction of the woman who afterwards became the wife of the principal character; adultery with two other women and improper relations with a young girl, a guest in the home of the principal character and his wife; *and the immorality of the whole story and its demoralizing tendency are claimed to rest upon the proposition that all of these women had these experiences without apparent harm to themselves or their position in society.*

Is there any more superlative degree to which nonsense may attain?

As the character of Witla is developed there are graphic scenes of his amours, on a few pages out of a volume of over seven hundred pages. Taking them all, first and last, they are, in the author's judgment, part of the setting of Witla's character—poor enough at best, with only now and then some faint recognition on his part that life is opportunity. It does not require any argument, but merely the statement of the fact, to convince us that a thing in one environment may be objectionable from the point of view of morals and even good taste and quite unobjectionable in another. Text is not to be ripped out of context and given an interpretation like that which the exhorter at protracted meetings or even the prominent divine from the pulpit in days gone by delighted to give to Scriptural chapter and verse. A nude model in the artist's studio is accepted as appropriate; exposed elsewhere it may well be the height of impropriety. Even a great picture in a gallery, that is an inspiration for the artist, may not be suitable to reproduce for indiscriminate circulation or for exhibition in the shop window. The Penal Law again and again discriminates in punishment for the same offense, according to the time, place and circumstance of its commission.

This obvious distinction is pointed out with much force in the case of *People v. Tylkoff*, in the Court of Appeals, at page 196, of Volume 212.

It is obvious that the question whether a given act or word is indecent must within limitations be tested by the prevailing common judgment and moral sense of the community where it is performed or uttered (*People v. Muller*, 96 N. Y. 408), and further that such determination may be largely influenced by the particular circumstances and conditions under which a given act occurs. For instance, in a public meeting called to decide whether a particular woman should be appointed a policewoman or social worker it might be entirely appropriate and proper truthfully to disclose concerning her that she was an improper person for such appointment because of the bad character indicated by the word set forth in the present indictment and which while perhaps somewhat harsher in sound is entirely synonymous with other words frequently used in public discussion or reports without any resulting thought of an affront to public decency. On the other hand, without excuse or reason to use such language of a woman in a public and mixed gathering assembled to consider no subject which made the same relevant or appropriate might properly be found to be an outrageous and indecent act.

From the point of view of probability as to the development of character, are we not to say this as to *The "Genius"*:

Even admitting that the subject-matter or the style of the book is not engaging, we must see that, on the whole, Witla with his temperamentally narrow, characterless outlook upon life and shut-in horizon, and deprivation of the advantages of adequate home-training or enlightening experience in the world, acts precisely as one would expect him to act. Moreover, no other character of the book does that which can fairly be said to be unnatural or unreasonable for the man or woman to do.

* * * * *

The question is not whether the passages which the Society for the Suppression of Vice censors can be published separately as a book, but whether they are in an appropriate context in *this* book. The question is a relative, not an absolute one, and resolves itself into this: Can such a character as Witla be portrayed by an author?

Among the dust-covered books in my library are the works of Thomas Bowdler. On turning to his "bowdlerized" Shakespeare I found that, with all his squeamishness, even he—appreciating the distinction I refer to—avoids the mutilation of many a passage wherein there is often language not appropriate for parade in conversation with children. A censor who objects to parts of *The "Genius"* would probably not be edified by such undeleted lines as these:

Ah, dear Juliet,
Why art thou yet so fair? shall I believe
That unsubstantial death is amorous,
And that the lean abhorred monster keeps
Thee here in dark to be his paramour?

You will find, too, on examination that Bowdler has often been equally sane, as for instance when he reproduces scene after scene from *Measure for Measure*. Necessarily this was so, since recalling the plot of *Measure for Measure*, we must recognize that if he had acted otherwise he would have been obliged to suppress it altogether. For the action of this absorbing drama turns largely on the intrigue of a lecherous hypocrite, to buy a noble woman's virtue with the ransom of her unprincipled brother from a sentence of death.

Men of understanding know that life is not a pleasing story or a play ending well, a holiday procession or a diverting pageant to be viewed with unctuous satisfaction by the amiable professor from the college window. They know that

looked at from many points of view it is a great tragedy which neither we nor the saints nor even professional altruists are permitted to interpret or understand—a struggle between contending forces where often the standards of right are yielded to might and injustice. It is not our part to dogmatize about life, and even religion deprived of some of its old orthodox views as to the compensations of an hereafter, must stand by the side of agnosticism, mute and reverent over the inscrutable decrees of Fate or Providence.

* * * * *

Permit me to call your Honors' attention to a few of the cases on our brief, wherein the right to circulate books has been the subject of litigation.

In 1897 the trial of the publisher of the English translation of D'Annunzio's *Triumph of Death* took place and he was acquitted. Yet the *Triumph of Death* in so-called lewd description goes much further beyond *Madame Bovary* than *Madame Bovary* goes beyond *The "Genius."*

There are two other well-known cases in which the opinions are models of a proper judicial attitude for this case.

In *Matter of Worthington*, reported in 62 State Reporter, the right was involved to sell *The Arabian Nights*, *Tom Jones*, *The Works of Rabelais*, *Ovid's Art of Love*, *The Decameron of Boccaccio*, *The Heptameron of Queen Margaret of Navarre*, *The Confessions of Rousseau*, *Tales from the Arabic* and *Aladdin*. Judge O'Brien said this:

It is very difficult to see upon what theory these world-renowned classics can be regarded as specimens of that pornographic literature which it is the office of the Society for the Suppression of Vice to suppress or how they can come under any stronger condemnation than that high standard literature which consists of the works of Shakespeare, of Chaucer, of Laurence Sterne, and other great English writers, without making reference to many parts of the Old Testament Scripture, which are to be found in almost every household in the land. The very artistic character, the high qualities of style, the absence of those glaring and crude pictures, scenes and descriptions which affect the common and vulgar mind, make a place for books of the character in question, entirely apart from such gross and obscene writings as it is the duty of the public authorities to suppress. It would be quite as unjustifiable to condemn the writings of Shakespeare and Chaucer and Laurence Sterne, the early English novelists, the playwrights of the Restoration, and the dramatic literature which has so much enriched the English language, as to place an interdict upon these volumes, which have received the admiration of literary men for so many years.

And further, at 117:

A seeker after the sensual and degrading parts of a narrative may find in all these works, as in those of other great authors, something to satisfy his pruriency. But to condemn a standard literary work because of a few of its episodes would compel the exclusion from circulation of a very large proportion of the works of fiction of the most famous writers of the English language.

In *St. Hubert Guild v. Quinn*, in 64 Miscellaneous Reports, Judge Seabury held concerning the question as to whether the volumes of Voltaire were obscene:

The judgment of the court below is based upon a few passages in each of these works, and these passages have been held to be of such a character as to invalidate the contract upon which the action has been brought. These few passages furnish no criticism by which the legality of the consideration of the contract can be determined. That some of these passages, judged by the standard of our day, mar rather than enhance the value of these books can be admitted without condemning the contract for the sale of the books as illegal. The same criticism has been directed against many of the classics of antiquity and against the works of some of our greatest writers from Chaucer to Walt Whitman, without being regarded as sufficient to invalidate contracts for the sale or publication of their works. * * *

It is no part of the duty of courts to exercise a censorship over literary productions.

The defendant's counsel asserts in his brief that in coming to a conclusion as to whether or no *The "Genius"* is obscene, you are not at liberty to make comparison between it and other books. This position is not supported by the authorities he cites, which go only to the extent of stating that where an author is on trial, there may not be submitted for the consideration of the jury the entire body of literature, nor the jury required to read a certain number of books before arriving at a verdict. Naturally enough this is proper, since bounds must be set to the introduction of evidence.

The correct view under the decisions we quote on our brief is that the accepted standards of literature do furnish a basis of comparison, since necessarily opinions concerning a specific thing undergo revision as such general standards change. We do not have to search far to find the illustration to make this abundantly clear. Books critical of the Bible, which were once considered blasphemous and subjected the author not only to public condemnation but punishment, may now be written and published, without even unfavorable

comment in either a court of law or the court of public opinion. The Church itself has almost ceased to protest against the views of distinguished divines as well as laymen that belief in none of the miraculous incidents of the Bible—including even the birth of Christ—is essential to religious faith. In drawing-room conversation, as well as in public discussions, matters to-day are freely spoken of in detail which could scarcely be hinted some time since without offense. We have had the sanity to welcome back *Mrs. Warren's Profession* to the stage.

What a man like Mr. Dreiser may be able to do further with his maturer art when he comes to deal with some of the menacing things of this day and generation—for all of them will not have been burnt out, even by the fires of war—we cannot know. Do we wish to destroy a pen such as his because it is not the pen of the exhorter? And are we entitled to expect much of him if we relegate him to a desk with some official of the Society for the Suppression of Vice looking over his shoulder to tell him what he may and what he may not write?

* * * * *

Do we wish to ignore the fact that somewhere between the depravity of criminals and the aspirations of worthy men—in a territory whose debatable boundaries have never been fixed—there are the Witlas, with just about his attenuated hold upon decency and morality and honor? Do we wish the book we applaud to give itself the supercilious air of indifference as to the ominous whereabouts of such a place and the existence of those who people it? Shall it deal with things as they are or as we have been drugged into believing them to be or as we wish them to be? Shall we covet truth or credulity? Are we forever to be on the lookout for the book that lures us to the delectable hour and to slippered ease? Shall authors aim at subserviency to what George Santayana in his *Winds of Doctrine* terms the “genteel tradition”? Are we not willing, now and then, to welcome a protest against the smug satisfaction of much of the writing of to-day—with its starved vocabulary and structural weakness and paucity of ideas and homiletic nonsense, in disregard of the privilege and high calling of authorship?

We shall err grievously if we fail to understand that the right answer to such inquiries in and out of Court is of grave import not only to society but to the Republic.

Even if you are not disposed to agree with me as to the justifiable province of fiction, the decision must be in favor of Mr. Dreiser. For not only is vice not glorified by him, but the effect upon Witla's character of licentious excess and the flouting of social conventions is in a measure disastrous. The slave of his carnal passions, he rises in the world only to fall again, until he determines upon his emancipation; and at the end it is clear that whatever success he may thereafter attain is likely to be measured by the persistence of that resolve. If Witla cannot be said to be wholly ruined by evil propensities, he certainly is not elevated by them. Although only now and then he has a realization of how unstable he is in high purpose,—and this in part is the moral of the book or even in a sense its tragedy—the reader throughout knows of it, and never once does he excite our sympathy or have an inkling himself of the finer issues of life, except when he determines upon some assertion, feebly lived up to, of mastery over himself and his desires.

So the book parts company with Witla, unrepentant, perhaps, for there is nothing in his conduct so far as he can see calling for repentance, but quite evidently disciplined if not chastened by an experience which, if it has taught him nothing else, has at least taught him the folly of persistence in stupid, degrading error. It may even be that he looks into a future where he shall be able to lay claim to character as well as fame. For the last we see of him is in a new home with his baby child, his sole precious possession now,—his little "Flower Girl." He has carried her asleep in his arms to her couch and tucked her in and has gone out of doors under the skies of a November night.

Overhead were the stars—Orion's majestic belt and those mystic constellations that make Dippers, Bears, and that remote cloudy formation known as the Milky Way.

Where in all this—in substance, he thought, rubbing his hand through his hair, is Angela? Where in substance will be that which is me? What a sweet welter life is—how rich, how tender, how grim, how like a colorful symphony.

Great art dreams welled up into his soul as he viewed the sparkling deeps of space.

The sound of the wind—how fine it is tonight, he thought.

Then he went quietly in and closed the door.

* * * * *

Permit me to emphasize these thoughts in closing:

It is not alone Mr. Dreiser's book which is on trial before you, but interests affecting the community and the State. For when the voice of courageous criticism, protest, warning or comment concerning law or custom or life has died out because of the injunctions of courts and the mandates of arrogant legislation, or is heard in feeble utterance because of the threat of punishment, from irresponsible and officious agencies or of obloquy from a mistaken public opinion, men will indeed be bondsmen. The suppression of this book is only a new manifestation of the increasing disposition of men not to desire knowledge of the truth, provided ignorance ministers to their peace of mind. So foreboding is this tendency that I hope your Honors will not regard the following illustrations as irrelevant to the present controversy.

In many ways which I do not stop to refer to, but with which all thoughtful persons are conversant, the Church itself is not, in the words of the Prophet, valiant for the truth while it feeds men on the husks of creed and doctrine, who famish for the nourishment of a quickening faith.

Even this world-war was due to the refusal of France and England as well as ourselves to know of the truth. For Germany had announced in degenerate revelry, in book and essay and lecture, from the housetops and from the throne, her malevolent, hellish purpose to rule or ruin. Not alone were we answerable for neglect of this warning, since chivalric France just before the storm was to burst upon her was turning her thoughts to the staging of the frivolous Caillaux Trial; and England was covering with dishonor her greatest General, who was merely pleading for an army of a few hundred thousand additional men wherewith to defend her imperilled Empire. Can we doubt that fearlessness to see the truth would have avoided this war which threatens civilization with an awful desolation, if that bent line of battle in France be ever broken? Nor is this menace a remote menace having to do with some future ideal State and citizenship. It is something immediately concerning us, for on the steadfastness of that bent line waits the appalling issue whether the men of our country shall be slaughtered or crucified or doomed to a degrading bondage, and the leprous hand of lust be reached out for the sacred person of the American woman. To visualize such desolation with reference to this very room, it would mean that in the place of you who sit in this High Court,—of which we

of this City and State and Country are very proud,—would be the fawning Prussian hireling to pronounce the will of Junkerdom; and we know that such a will is the death of Justice. Yet we are confronted with all these hideous possibilities because of the disinclination of the world to look fearlessly upon the uninviting side and things of life.

Let us not deceive ourselves by regarding these thoughts as remote from this case. For to-day we of the multitude by turning away from the Truth whenever it presents a forbidding or even an unconventional countenance are in the degrading, perilous bondage of an intellectual formalism. It is a bondage which, among other things—by interpreting words to be things, emotional ideals to be ideas, creeds to be faith, superstition to be religion, appearances to be realities and many a new-fangled notion to be the equivalent for the old-fashioned values—has brought us to the cross-roads where we must take one of two paths; that for which ignorance or craven subserviency to popular prejudice is the signpost, or that where knowledge which is unafraid is pointing the way. One is easy to travel, for it goes downwards with the heedless, motley crowd, but it abounds in treacherous places; while the other, even if it require the arduous journey amid prospects often disheartening, has the exhilaration of the upward climb with an undaunted company, and reaches the heights at last.

Mr. Dreiser insists that in his uncompromising portrayal of character he has invited us to know of truth by seeing life as it is and not as some visionary souls would conceive it to be. Shall the ascetic zealot, the obsequious time-server, the professional reformer, the blatant demagogue or their hired man be commissioned by the courts to deny to him this privilege? Nor is it extravagant to say that your favorable disposition of this case will contribute in no small measure to fortify and sustain men in the determination no longer intellectually to “halt between two opinions”—as the people of Israel, when arraigned by the prophet Elijah, were halting in their religious beliefs between Baal and Jehovah.